

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RUSSELL G. ZEILENGA,

Appellant.

No. 37840-0-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Russell Zeilenga guilty of possession of a stolen vehicle. Zeilenga appeals, arguing sufficient evidence does not support the jury finding that he knowingly possessed a stolen car. Because sufficient evidence supports the jury's conclusion that Zeilenga knowingly possessed a stolen vehicle, we affirm.

FACTS

Background Facts

Zeilenga lived in Benton City, Washington with Scott Passage and Passage's girl friend, Dawn Chambers, for about a month and a half. During that time, Zeilenga worked on Passage's cars. Passage gave Zeilenga permission to start the cars on Passage's property for repair purposes but not to take the cars off his property.

Zeilenga and Chambers were required to appear in court in Shelton, Mason County on

March 4¹ for citations on a matter unrelated to this appeal. Because Chambers's license was suspended and Zeilenga's license revoked, Passage planned to take March 4 off work and drive them to Shelton. Around February 29, however, Passage told Zeilenga to move out of his home. The next morning, Passage awoke to find that Zeilenga was gone and Passage's 1989 Mustang was also gone. Passage spent approximately one and a half days looking for his car before reporting it stolen on March 2. Chambers arranged for her son-in-law, Brett Clinton, to drive her to court. On March 4, Clinton and Chambers arrived in Shelton and went to a Safeway grocery store. As they left the store, they saw Zeilenga drive up in Passage's Mustang and park it in the Safeway parking lot. Clinton contacted the Shelton police.

When the police arrived, Clinton accompanied Officer Justin Doherty to the courthouse and identified Zeilenga through a window while Officer Edward Day waited in the parking lot with the Mustang. Doherty confronted Zeilenga as he exited the courthouse. Doherty asked Zeilenga how he had come to Shelton; Zeilenga said he received a ride from a friend.

Officer Doherty and Zeilenga walked to the Mustang, where Officer Day asked Zeilenga whether he knew anything about the vehicle. Zeilenga said no. Day told Zeilenga that a witness saw him driving the car. Zeilenga initially continued to deny knowing anything about the car, but when Day began to pat him down, Zeilenga said that he had been a passenger in the car. Day asked Zeilenga if he knew where the keys were. Zeilenga said no, but Day found the keys in Zeilenga's pocket. Day opened the Mustang's door with the keys, guided by Zeilenga's tips on how to open the damaged door. Day then used the keys to start the Mustang.

Procedural Facts

¹ All dates occurred in 2008.

The State charged Zeilenga with possession of a stolen vehicle. At a jury trial, the State's witnesses testified as described above. Zeilenga testified that he stayed at Passage's house until the morning of March 4, when he drove the Mustang to Shelton with Passage's express permission. Zeilenga stated that he frequently drove the Mustang off Passage's property and he was not aware that Passage had reported it stolen when he left for Shelton. Zeilenga further testified that he lied to the police because he did not have a driver's license.

A jury found Zeilenga guilty of possession of a stolen motor vehicle. Zeilenga timely appeals his conviction.

DISCUSSION

Zeilenga argues sufficient evidence does not support the jury's finding that he knowingly possessed a stolen vehicle. Specifically, Zeilenga argues that he could not knowingly possess a stolen vehicle because he used the Mustang in the past and Passage gave him permission to drive it to court. We disagree.

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found each element of the offense beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A sufficiency of the evidence challenge admits the truth of the State's evidence and inferences reasonably drawn therefrom. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence carry equal weight. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004) (citing *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). A reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v.*

Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

In order to convict Zeilenga of possession of a stolen motor vehicle, the State had to prove beyond a reasonable doubt that he knowingly possessed a stolen motor vehicle. RCW 9A.56.068(1), .140(1).² A person acts knowingly with respect to a fact when he is aware of the fact or when he has information which would lead a reasonable person in the same situation to believe the fact exists. RCW 9A.08.010(1)(b).

Here, substantial evidence supports the conclusion that Zeilenga knowingly possessed a stolen vehicle. Passage, the car's owner, testified that he told Zeilenga to move out of his house the day before the car went missing and never gave Zeilenga permission to take the car. Chambers, who lived at Passage's house, testified that Zeilenga and the car disappeared three or four days before she saw Zeilenga driving the car in Shelton. Both Chambers and Clinton saw Zeilenga driving the car, and Officer Day found the car's keys in Zeilenga's pocket. When confronted about the car, Zeilenga lied to the police multiple times, which reasonably supports the inference that he was aware the car was stolen. Although Zeilenga's testimony contradicts the State's case, we will not disturb the trier of fact's determination of credibility. *Thomas*, 150 Wn.2d at 874-75. A rational jury could conclude from the evidence that Zeilenga knowingly possessed Passage's stolen car.

Because sufficient evidence supports the jury's verdict finding that Zeilenga knowingly

² RCW 9A.56.068(1) states that "[a] person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle." RCW 9A.56.140(1) defines "possessing stolen property" in part as "knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen." RCW 9A.56.068 implicitly incorporates RCW 9A.56.140's definition of "possessing stolen property" because the definition applies to other stolen property crimes in the same chapter and provides the *mens rea* element of the offense. See 11A Washington Practice: Washington Pattern Jury Instructions: Criminal 77.21, at 178 (3d ed. 2008). The jury instructions at Zeilenga's trial reflected this interpretation.

No. 37840-0-II

possessed a stolen vehicle, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

HOUGHTON, P.J.

HUNT, J.